

REMARKS

Applicants wish to thank the Examiner for reopening prosecution and issuing a new office action for this case.

I. Claim Rejections under 35 USC § 103

Claims 1-9, 11, 14-58, 60-63, 65, and 66 stand rejected under 35 U.S.C. § 103 as allegedly being unpatentable over U.S. Patent No. 5,937,165 (Schwaller) in view of U.S. Patent No. 5,271,000 (Engbersen).

Claims 1, 14, 32-36, 40, and 54

Claim 1 recites tracing the execution of the workload to *identify a potential data conflict* (Emphasis Added). Claims 14, 32-36, 40, and 54 recite similar limitations. Applicants agree with the Examiner that Schwaller does not disclose the above limitations. According to the Office Action, column 7, lines 14-49 of Engbersen allegedly disclose the above limitations, and therefore, it would have been allegedly obvious to modify Schwaller in view of Engbersen because "it allows for the avoidance of data conflicts." However, the cited passage of Engbersen actually discloses:

Under the assumptions of equal memory size, traffic load, and traffic pattern, a switch that employs the complete sharing policy shows a significantly smaller, packet loss rate than a switch with complete partitioning. Hence, complete sharing approaches lead to switching systems with minimum memory size requirements. Nevertheless, some problems may occur in connection with bursty traffic. It is possible, for example, that some heavily loaded output queues occupy the entire shared memory and thus block the traffic on other paths. A sharing policy with minimum and maximum allocation constraints could bypass this problem.

In contrast to the shared-medium and shared-memory concepts, where *the traffic* from all inputs is concentrated in a common resource operating with N times the bandwidth of a single line, space-division type switches establish multiple concurrent paths from inputs to outputs, each with the same data rate as for a single line. FIG. 4 shows a common model of a space-division switch. Depending on the internal structure of the switch, it may be impossible to set all required paths simultaneously. This characteristic, called internal blocking, is the main cause for throughput limitations.

Internally blocking switches cannot buffer packets at their outputs. *Buffers must be located at the places where the potential conflict occurs, or upstream (e.g. at the inputs).* For each input line, there is a router (i.e. demultiplexer) which routes

the packets to N separate buffers, one for each output. For each output line, there is a concentrator (i.e. a multiplexer) which connects all buffers associated with the same output to the appropriate output line. Thus the space-division switch consists of N routers, N concentrators and N² buffers. The conventional space-division type switches differ in the way the router and concentrator are implemented and in the location of the buffers.

(Emphasis Added)

Thus, Engbersen discloses conflicts that are routing conflicts. There is nothing in Engbersen that discloses or suggests a potential conflict that is a data conflict, nor does Engbersen disclose or suggest a potential data conflict that is identified by tracing the execution of the workload, as recited in the claims. Since both Schwaller and Engbersen fail to disclose or suggest the above limitations, they cannot be combined to form the subject matter of claims 1, 14, 32-36, 40, and 54.

Also, Applicants respectfully submit that just because Engbersen discloses “potential conflict,” it does not necessitate a finding that it would have been obvious to combine with the alleged “tracing” feature of Schwaller to accomplish the above limitations. According to the Office Action, the reason to combine Engbersen with Schwaller is that it is allegedly desirable to avoid data conflicts. However, under the rulings of the Supreme Court for *KSR Int’l v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007), the alleged problem must be known in the art (*Id.*, at 1742-1743). In this case, there is nothing in the record indicating that the system of Schwaller has any known problem due to data conflict. Also, Engbersen merely discloses placing buffers at location where routing conflict occurs, and thus, Engbersen does not teach anything regarding *identifying* a potential conflict that is a *data* conflict, and there is nothing in the record indicating that the buffers of Engbersen can in fact be used to identify data conflicts. Thus, one skilled in the art would not have combined Schwaller with Engbersen in the manner purported in the Office Action.

For at least the foregoing reasons, claims 1, 14, 32-36, 40, and 54, and their respective dependent claims, are believed allowable over Schwaller, Engbersen, and their combination.

Claims 2, 37, 41, 55, 60, and 65

Claim 2 recites that the act of identifying potential data conflicts comprises predicting *how many* data conflicts will occur (Emphasis Added). Claims 37, 41, 55, 60, and 65 recite similar limitations. According to the Office Action, column 9, line 46 to column 10, line 39 of Schwaller allegedly discloses the above limitations. However, the cited passage of Schwaller discloses test scripts that include SEND and RECEIVE commands. There is nothing in Schwaller that discloses or suggests data conflicts (e.g., data conflicts that involve these commands), nor does Schwaller disclose or suggest *predicting how many* data conflicts will occur. For these additional reasons, claims 2, 37, 41, 55, 60, and 65 are believed allowable over the cited references and their combination.

Claims 3, 38, 42, 56, 61, and 66

Claim 3 recites that the act of identifying potential data conflicts comprises predicting types of data conflicts. Claims 38, 42, 56, 61, and 66 recite similar limitations. According to the Office Action, column 9, line 46 to column 10, line 39 of Schwaller allegedly discloses the above limitations. As discussed, the cited passage of Schwaller discloses test scripts that include SEND and RECEIVE commands. There is nothing in this cited passage of Schwaller that discloses or suggests data conflicts. Thus, Schwaller also does not disclose or suggest *predicting types* of data conflicts. For these additional reasons, claims 3, 38, 42, 56, 61, and 66 are believed allowable over the cited references and their combination.

CONCLUSION

If the Examiner has any questions or comments regarding this amendment, please contact the undersigned at the number listed below.

To the extent that any arguments and disclaimers were presented to distinguish prior art, or for other reasons substantially related to patentability, during the prosecution of any and all parent and related application(s)/patent(s), Applicant(s) hereby explicitly retracts and rescinds any and all such arguments and disclaimers, and respectfully requests that the Examiner re-visit the prior art that such arguments and disclaimers were made to avoid.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **OID-2000-017-01**. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **OID-2000-017-01**.

Respectfully submitted,

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